

Are Your Internet Sales Taxable?

Yours may be among the many businesses taking advantage of changing technology to market products over the Internet. Despite all of the publicity surrounding Internet commerce, one essential fact is often overlooked — there is no general tax exemption for sales made over the Internet. This publication is intended to help you determine if you must pay California's sales and use taxes on your Internet sales.

Sales and Use TAX FACTS

Publication 109 • LDA

All printed publications are available and can be downloaded from the BOE website at <http://www.boe.ca.gov>.

Our Information Center staff is also available from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays at 800-400-7115.

(For the hearing-impaired:
— from TDD phone: 800-735-2929;
— from voice phone: 800-735-2922).

Internet: www.boe.ca.gov



Businesses physically located in California

If your business is located in California, your Internet sales of physical products are generally taxable unless they qualify for a specific tax exemption or exclusion (see reverse). For sales tax purposes, Internet sales are treated just like sales you make at retail stores or other outlets, through sales representatives, over the telephone, or by mail order.

Businesses located outside of California

If your business is located outside of California, your sales of physical products delivered to California locations are generally subject to the state's use tax. While your customers are responsible for the use tax, you must collect it from them and pay it to us if you

- Have a permanent or temporary business location in California, including a warehouse, sales room, or office; or you
- Have any kind of representative or agent in the state, even temporarily, who makes sales, takes orders, installs or assembles merchandise, or makes deliveries for you.

If either of the conditions above apply to your operations, you are required to register with us and obtain a *Certificate of Registration — Use Tax Account*. If you do not register and collect the use tax, your customers must pay the tax directly to us (see "Voluntary collection . . ." below).

Special case — leases: Even if the criteria above do not apply to your business, you must register, collect, and pay use tax on payments you receive from the lease of merchandise located in California. This is true whether you negotiate the lease over the Internet or by any other means.

The use tax rate is the same as the sales tax rate for any given California location. Transactions that are exempt from sales tax are usually exempt from use tax (see reverse).

Voluntary collection of use tax

As noted above, your customers must pay the use tax to us if you do not collect it from them. You may wish to voluntarily register and collect the use tax as a customer service even if you are not required to do so.

To contact your Board Member, see www.boe.ca.gov/members/board.htm

BOARD OF EQUALIZATION MEMBERS

RAMON J. HIRSIG
Executive Director

BETTY T. YEE, ACTING MEMBER
1st District, San Francisco

BILL LEONARD
• 2nd District, Sacramento/Ontario

CLAUDE PARRISH
3rd District, Long Beach

JOHN CHIANG
4th District, Los Angeles

STEVE WESTLY
State Controller

Some Internet sales are not taxable

Common exempt transactions

Some of your Internet sales — including sales for resale, sales of cold food products, and sales delivered outside of California — may *not* be subject to California sales or use tax. Common exemptions are described in publication 73, *Your California Seller's Permit*. More detailed information is found in publication 61, *Sales and Use Taxes: Exemptions and Exclusions*. Both publications are available from our Information Center and Web site (see reverse).

Products electronically transmitted to customers

Your sale of electronic data products such as software, data, and digital images is generally not taxable when you transmit the data to your customer over the Internet or by modem. However, if as part of the sale you provide your customer with a printed copy of the electronically transferred information or a backup data copy on a *physical storage medium* such as a CD-ROM or diskette, your entire sale is usually taxable.

For example, if your company sells canned (non-custom) software programs to customers who download them from a server, those sales are generally not subject to tax. However, if you also provide your customers with a backup copy on a CD-ROM, the entire transaction is taxable. Similarly, if you transmit a stock (non-custom) database to your customer over the Internet and also provide a printed copy of the contents, the entire sale is subject to tax.

For more information regarding the sale of computer programs and data processing services, you may wish to obtain a copy of Board Regulation 1502, *Computers, Programs, and Data Processing*. Information on sales of digitized photographs is found in publication 68, *Tax Tips for Photographers, Photo Finishers, and Processors*. Both are available from our Information Center and Web site (see reverse).

For more information

If you need more information or help determining how tax applies to a specific transaction, please call our Information Center (see reverse). You may also wish to order the following regulations from the Information Center or check for them on our Internet site:

Regulations

- 1502 Computers, Programs, and Data Processing
- 1528 Photographers, Photocopiers, Photo Finishers, and X-Ray Laboratories
- 1620 Interstate and Foreign Commerce
- 1684 Collection of Use Tax by Retailers
- 1685 Payment of Use Tax by Purchasers
- 1827 Collection of Use Tax by Retailers (*for special district taxes*)

A complete list of Board publications is found in publication 51, *Guide to Board of Equalization Services*. You may obtain the publication or a publications order form from our Information Center or Web site.

Note: The statements in this fact sheet are general and are current as of October 2005. The sales and use tax law and regulations are complex and subject to change. If there is a conflict between this publication and the law or regulations, decisions will be based on the law and regulations.

